

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL UTILITY ORDERS
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July 1, 2002

US WEST COMMUNICATIONS,
INC.'S

DOCKET NO. UT-003022

DOCKET NO. UT-003040

Compliance With Section 271 of
the Telecommunications Act of
1996

39TH SUPPLEMENTAL ORDER
APPROVING SGAT AND QPAP

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In the Matter of

US WEST COMMUNICATIONS,
INC.'S

Statement of Generally Available
Terms Pursuant to Section 252(f)
of the Telecommunications Act of
1996

Qwest's Performance Assurance Plan ("QPAP") is not just a contract between Qwest and Competitive Local Exchange Carrier ("CLECs"), but a performance assurance plan through which Qwest assures the Commission, competing carriers and the Federal Communications Commission ("FCC") that Qwest will continue to adhere to the requirements of section 271 after it obtains section 271 authority. ¶19

The Commission accepts Qwest's proposed modifications to the QPAP, and finds that Qwest has modified the QPAP in compliance with prior Commission orders. The Commission accepts the provision allowing Qwest to challenge in court any modifications to the QPAP, and provides that the QPAP is not a grant of authority to the Commission, nor a waiver by any party of any claim that the Commission lacks jurisdiction to modify the QPAP. ¶19

The Commission finds the explanations of Liberty Consulting, hired to audit Qwest's

wholesale performance measures and retail performance measures, and its employee Mr. Stright, to be credible, despite a comfortable working relationship with Qwest, and does not take issue with Liberty's professional judgment. ¶53

In reviewing Liberty's efforts to reconcile Qwest's and CLEC performance data and KPMG Consulting Group ("KPMG")'s efforts in testing Qwest's Operations Support's Systems ("OSS"), the Commission is concerned about the number of human errors by Qwest personnel in handling orders and troubles as requires by the Performance Indicator Definitions ("PIDs"). Guided by FCC orders concerning ILEC performance data, the Commission recommends the FCC give lesser weight to performance data for measure OP-4. ¶58

Qwest must continue working collaboratively with CLECs to address the issue of human errors through revising or adding PIDs in discussions before the Commission or through a multi-state collaborative effort. ¶59

After applying the FCC's standards of review to Qwest's performance results for Washington state, the Commission finds that Qwest has demonstrated, through its commercial performance, that it is providing functions and services to CLECs in compliance with the requirements of the fourteen checklist items set forth in 47 U.S.C. §271(c)(2)(B). ¶97

The deficiencies in Qwest's performance data for Checklist Items No. 2 (Access to

UNEs), 4 (Unbundled Loops), 11 (LNP), and 14 (Resale) asserted by various CLECs are not sufficient to find that Qwest does not comply with the requirements of the checklist items. ¶¶60-97

Qwest failed to meet certain test criteria during the OSS testing process, and KPMG was unable to determine, for certain test criteria, whether Qwest satisfied the test requirements. The Commission does not find these deficiencies sufficient, individually or collectively, to preclude a finding that Qwest is providing OSS functions as required under Checklist Item No. 2. ¶227

Because the FCC does not consider product and process issues as necessary to a change management system, the Commission finds Qwest's Change Management Plan for product/process issues to be adequate. ¶206

The Commission finds that Qwest has sufficiently adhered to the FCC's requirements for a change management system for systems issues, relying on the FCC's determination that a change management plan must be adequate, but need not reach perfection. ¶¶204-211

The Commission does not find the number of diagnostic PIDs in Qwest's total Performance Indicator Definitions to be problematic, as the PIDs were developed collaboratively by state commission staff, CLECs, and Qwest. In addition, the Regional Oversight Committee (ROC) is working with the CLECs and Qwest to develop a long-term PID administration that

will continue to address the issue of developing new PIDs and evaluating whether existing PIDs should be modified.

¶224

Because there is no pending complaint before the Commission concerning certain interconnection agreements not filed with the Commission, the Commission does not presume that any party acted illegally, nor does the Commission rely on such presumptions in making a decision. The Commission does not find it appropriate to address allegations that the OSS test results of Qwest's performance data are invalid as a result of alleged preferential treatment given to certain CLECs who entered into unfiled agreements with Qwest. ¶226

Following the FCC's analysis of whether the local exchange market is open to competition in a state, the Commission finds that Qwest has complied with the requirements of the competitive checklist, and presumes that the local exchange market in Washington state is open to competition. The concerns and evidence raised by the parties, i.e., low CLEC market share, low level of access lines served by CLECs, financial failures of CLECs and Data Loop Exchange Carrier ("DLECs") in the Washington market, and market power held by Qwest, are not sufficient to rebut the presumption of an open local exchange market. ¶257

The FCC presumes that long-distance entry will benefit consumers if the local market is open to competition. The Commission finds the local exchange market to be open, and

finds no basis to rebut the presumption that Qwest's entry will be in the public interest. ¶268

The QPAP filed with the Commission on June 25, 2002, should provide adequate assurance that the local market in Washington state will remain open to competition if the FCC were to grant an application by Qwest for section 271 authority. ¶270

The Commission does not find the evidence presented by the parties, regarding the following items, to be sufficiently unusual or disturbing to preclude a finding that an application by Qwest for section 271 authority is in the public interest:

Indefeasible Rights of Use Agreements (¶277); pending FCC complaints (¶279); unfiled agreements with CLECs (¶291); a decision from another state commission (¶302); a single piece of evidence used to show a pattern of activity (¶307); AT&T's complaint concerning Qwest's local service freeze practices (¶311); past 271 violations (¶315); timely and accurate provisioning of special access circuits (¶316); structural separation of Qwest (¶321); and the level of Qwest's UNE rates (¶¶326-329). ¶331.

The Commission denies Public Counsel's request to require Qwest to establish its performance under the QPAP for 90 days prior to Qwest filing a section 271 application with the FCC. The Commission determined in the *30th Supplemental Order* that the QPAP will become effective on the date of FCC approval of a section 271 application. ¶332

July 2, 2002

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant

v.

PACIFICORP, d/b/a PACIFIC
POWER & LIGHT,

Respondent.

DOCKET NO. UE-001734

ORDER DENYING MOTION FOR LEAVE
TO FILE TESTIMONY

A party must advance specific, relevant changes in facts or circumstances that would warrant a second opportunity to file testimony. The mere passage of time does not constitute a “changed circumstance” nor does an unsupported contention of a shift in parties’ status and positions. ¶13.

July 2, 2002

TEL WEST COMMUNICATIONS,
LLC.,

Complainant,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-013097

COMMISSION DECISION DENYING
PETITION FOR RECONSIDERATION

The Commission affirms that it has authority to fashion a remedy based on the facts of the case, but the remedy depends on the cause of action asserted and the facts elicited, as well as the context of the regulatory provision alleged to have been violated. ¶28; *WAC 480-09-530*.

The Commission commits no error when it does not address an issue if a party fails to address the issue in its written comments on a recommended decision or in its oral argument to the Commission, except for a short conclusory statement; offers no legal

analysis, no citation of legal authority and no reference to arguments on the issue in its prehearing brief; and, actually states that it finds the remedy provided in the recommended decision acceptable. ¶31.

Policy-based positions are better addressed in brief rather than through testimony. ¶13.

July 12, 2002

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Respondent,

v.

RAINIER VIEW WATER
COMPANY, INC.,

Complainant.

DOCKET NO. UW-010877

ORDER REJECTING TARIFF FILING;
ORDERING REFILING

The ultimate determination to be made by the Commission in a water rate proceeding is whether the rates and charges proposed in the revised tariffs are fair, just, reasonable, and sufficient, pursuant to RCW 80.28.020.

Although a (“Subchapter”) S corporation pays no federal income taxes, which are the responsibility of shareholders, the Commission will impute such taxes for ratemaking purposes based on company earnings at the lower of the “C” corporation or the individual tax schedules.

An S corporation for which taxes are imputed must calculate accumulated deferred income taxes, consistent with the tax treatment of utility companies with C corporation status.

Fees paid to a water utility to reimburse the company's expenses for service connections must be deducted from plant in service to reflect the appropriate amount of net investor-supplied funds. They may be considered as contributions in aid of construction, or CIAC.

A rebate to a regulated utility company of a portion of interest paid to a lender may be included in the calculation of the overall interest rate on debt for purposes of determining future rates.

The Commission may consider that an argument advanced at hearing is abandoned if a party does not argue the matter on brief.

The Commission may consider post-hearing evidence of rate case costs when necessary to fairly compensate a company for its necessary costs of prosecuting a rate proceeding and when other parties do not object to receipt of the post-hearing information.

The Commission may authorize rate treatment of an owner's vehicle used in a regulated utility business when the depreciated value of the used vehicle is equivalent to alternatives, even though the comparable costs of the vehicle when new might have been partially disallowed.

In water utility case, the Commission may accept as proper the rate of return used in prior proceedings when that rate of return appears to be reasonable in light of recent Commission orders, when the result for ratemaking purposes is similar to the result

sought by the opposing party, and when the costs of prosecuting a full rate of return case with expert testimony would be out of proportion to the scale of the company's financial operations.

The cost of variable debt should be calculated using an average during the test period, rather than a single point in time, to recognize potential volatility and to avoid the possibility of setting rates when cost is at an extreme high or low point. The period over which the average is calculated and the means of calculation may be determined in individual cases.